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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1982

GILBERT A. HARING, Lieutenant,
Arlington County Police Department, et al.,
*Petitioners,*

*vs.*

JOHN FRANKLIN PROSISE,
*Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

## BRIEF OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., JOINED BY THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., THE GULF AND GREAT PLAINS LEGAL FOUNDATION OF AMERICA, INC., AND THE VIRGINIA CHAPTER OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., AS AMICI CURIAE IN SUPPORT OF THE PETITIONERS

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This brief is filed pursuant to Rule 36 of the Supreme Court Rules. Consent to file has been granted by Hon. Charles G. Flinn, Arlington County (Va.) Attorney, Counsel for Petitioners, and Norman A. Townsend, Esq., Counsel for Respondent. Letters of Consent of both parties are being filed with the Clerk of this Court.

## INTEREST OF AMICI

**Americans for Effective Law Enforcement, Inc. (AELE),** as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more

effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties and property, within the framework of the various State and Federal Constitutions.

**AELE** has previously appeared as *amicus curiae* forty-five times in the Supreme Court of the United States, and thirty-three times in other appellate courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio and Missouri.

**The International Association of Chiefs of Police, Inc. (IACP),** is the largest organization of police executives and line officers in the world, consisting of more than 14,000 members in 75 nations. Through its programs of training, publications, legislative reform, and *amicus curiae* advocacy, it seeks to make the delivery of vital police services more effective, while at the same time protecting the rights of all our citizens.

**The Gulf & Great Plains Legal Foundation of America, Inc. (GGP),** is a non-profit, tax-exempt corporation, supporting the operations of a public interest law firm. It functions nationwide, although its efforts are concentrated most heavily in the states of the gulf coast and great plains regions. All litigation undertaken by GGP is approved by its Board of Directors, who are attorneys and businessmen or women, residing throughout this midwestern area.

Among other goals, GGP seeks to preserve a rational, workable criminal justice system and an appropriate constitutional balance between the Federal Government and the states. In pursuit of these goals, GGP has appeared as *amicus curiae* in the Supreme Court of the United States, the Federal District Courts, in the Circuit Courts of Appeal, and in various state courts. GGP supports the right to bring civil rights actions in proper circumstances. Indeed, GGP has *itself* brought actions pursuant to § 1983. However, the proliferation of

unmeritorious actions has reached a point at which GGP believes it detracts seriously from the ability of both the federal courts and criminal justice system to perform their functions properly.

**The Virginia Chapter of Americans for Effective Law Enforcement, Inc.**, is a not-for-profit citizens organization with objectives and goals similar to those of the parent organization, **AELE.** In addition, the **Virginia Chapter** provides speakers for civic organizations, addresses issues in the media, and most recently, sponsored a state-wide conference on sentencing in conjunction with the Virginia State Crime Commission.

***Amici's*** interest arises from the important constitutional and policy questions pertaining to police activity in general, and in particular the type of activity involved in the instant case. We are vitally concerned with the issue of finality in Fourth Amendment claims and the need to protect law enforcement officers and the courts from the large number of groundless civil actions they will face as a result of the decision of the Fourth Circuit Court of Appeals in *Prosise* v. *Haring*, 667 F. 2d 1133 (4th Cir. 1982). It is our belief that it is desirable to fully explore and discuss the legal and policy issues of interest to law enforcement agencies, and that the full airing of the issues will aid the court in understanding the critically important law enforcement interest in this case and in putting all of the issues into the broadest possible perspective.

We stress also that our law abiding citizens have much at stake in this case, involving as it does the ability of the police to carry out their function without the constant threat of being mulcted in damages by prisoners filing *pro se* suits months or years after the complained-of conduct, and *after* the constitutional claims *could have been litigated* in a full and fair hearing in a state court. If the police are to be called upon to protect the public and themselves, they must be protected from the ever-present spectre of frivolous and harassing law suits in performing their sworn duty. They cannot be expected to

constantly keep their eyes on the possibility of lawsuits while attempting to perform their duty, otherwise it would be futile to expect them to effectively perform that duty.

The policeman's role is vital to the security of a Free Society as noted in the *President's Commission on Law Enforcement and Administration of Justice*, 92, 94 (1967):

> In society's day-to-day efforts to protect its citizens from the suffering, fear, and property loss produced by crime and the threat of crime, the policeman occupies the front line. It is he who directly confronts criminal situations, and it is to him that the public looks for personal safety. The freedom of Americans to walk their streets and be secure in their homes—in fact, to do what they want when they want—depends to a great extent on their policemen.

We ask this Court to do no more than it has already done in reaffirming those principles of finality in the civil litigation process that will make it possible for the police to continue their difficult tasks, while fully protecting individuals who have meritorious claims of violation of their civil rights. The balance has already been struck by this Court many times, as, for example, in *Allen* v. *McCurry*, 449 U. S. 90 (1980), in which *amicus* AELE filed a brief with this Court on behalf of the petitioners in that case. In *Allen* this Court held that conventional doctrines of collateral estoppel are to be applied to § 1983 claims. We ask the Court not to recede from the appropriate application of the principles of law inherent in *Allen*.

## ARGUMENT

### AFFIRMANCE OF THE DECISION OF THE COURT OF APPEALS WILL ENCOURAGE INNUMERABLE STATE PRISONERS TO SEEK LITIGATION OF FOURTH AMENDMENT AND OTHER CONSTITUTIONAL CLAIMS UNDER 42 U. S. C. § 1983 AND WILL SUBJECT INCREASING NUMBERS OF LAW ENFORCEMENT OFFICERS TO THE HARASSMENT AND VEXATION OF GROUNDLESS CIVIL LITIGATION

This case raises the issue of whether a person who has pled guilty in a state criminal court to manufacturing illegal drugs, and who did not raise the validity of the search that produced the essential evidence of the crime, can subsequently bring an action in a federal court under 42 U. S. C. § 1983 claiming that the search was unconstitutional. It is the contention of the petitioners that by pleading guilty in the state criminal court, respondent waived his right to litigate the constitutionality of the search in a § 1983 action, and that the conviction based upon such plea collaterally estops the respondent from proceeding in a § 1983 action, inasmuch as the state court expressly found a sufficient factual basis for the plea and that basis was the evidence produced by the search. Thus, the Fourth Amendment issues were impliedly determined against the respondent because the search was an essential ingredient in the proof of the crime.

*Amici* will not reiterate the legal arguments made by the petitioners in this case, although we are in complete accord with such arguments and wish to associate ourselves with and express our complete support for them. We will, however, address a key policy issue in this case, and point out its importance to the effectiveness of law enforcement nationwide.

We refer to the likelihood of a continued "torrent" of groundless civil litigation if the decision of the court below is affirmed. That term was applied to the dramatic growth of civil

rights litigation in recent years by Mr. Justice Rehnquist in his dissent in *Monell* v. *Dept. of Social Services,* 436 U. S. 658, 724 (1978). The potential for this explosion of civil rights litigation is greater in the instant case than it was in *Allen* v. *McCurry, supra,* in view of the far greater number of convictions in the state courts based upon pleas of guilty rather than as the result of trials.

The statistics of filings of civil rights actions in the Federal District Courts substantiate the validity of Justice Rehnquist's warning. Such filings during the period 1961 to 1973 grew from 261 to 7,679. *Administrative Office of the United States Courts, 1973 Annual Report* 128. During the fiscal years 1974 through 1978, filings of all types of actions by state prisoners alone grew from 13,423 to 16,969. *Administrative Office of the United States Courts, 1978 Annual Report* 60. During fiscal 1977 and 1978, while all categories of prisoner filings increased 12.2%, civil rights suits filed by prisoners increased 25.9% to 10,366. *Id.,* 61. Between 1970 and 1978, civil rights complaints filed by state prisoners increased 379.3%, totaling some 9,730 in 1978. *Id.,* 75-76. All prisoner filings increased 907.1% between 1960 and 1978, while general civil filings grew a mere 134.1% by comparison, *Id.,* 77.

The latest statistics gathered by the Administrative Office of the United States Courts will show a relentless increase from the 1978 levels, as indicated in this abridged Table which is to appear shortly in the *1982 Annual Report:*

**Table 20**
**U.S. District Courts**
**Prisoner Petitions Filed**
**During the Twelve Month Periods Ended June 30, 1970 and 1975 through 1982**

| Type of Petition | 1970 | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 | 1981 | 1982 | Percent Change 1982 over 1977 | Percent Change 1982 over 1981 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Petitions by State Prisoners..... | 11,812 | 14,260 | 15,029 | 14,846 | 16,969 | 18,502 | 19,574 | 23,607 | 24,975 | 68.2 | 5.8 |
| Civil Rights ..... ..... | 2,657 | 6,128 | 6,958 | 7,752 | 9,730 | 11,195 | 12,397 | 15,639 | 16,741 | 115.6 | 7.0 |

*Administrative Office of the United States Courts, 1982 Annual Report* _____. Prepared by: Statistical Analysis and Reports Division, Administrative Office of the U.S. Courts, Washington, D.C. 20544.

How great is the potential exposure to civil rights litigation by state prisoners as a result of the decision of the court below can be seen by the following abridged table of criminal disposition types for state courts for the year 1977, which will shortly be published by the National Center for State Courts. This table shows the far greater number of state convictions based upon guilty pleas than after trial, as was involved in *Allen* v. *McCurry, supra.* The figures for the largest state, California, are illustrated here:

**Table 38**

**Criminal disposition types for trial courts, 1977.**

**State population. Courts reporting criminal disposition types, grouped by unit of count definition.**

**Plea, total conviction, trial conviction, acquittal, nolle prosequi, and dismissal.**

**Each disposition type as a percent of criminal dispositions.**

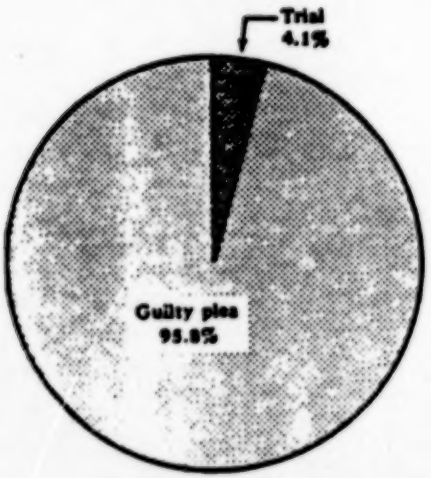
| State, court title, and unit of count | Adult population in thousands | Total criminal dispositions | Plea | | Total conviction | | Trial conviction | | Acquittal | | Nolle prosequi | | Dismissal | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Number | As percent of disposed | Number | As percent of disposed | Number | As percent of disposed | Number | As percent of disposed | Number | As percent of disposed | Number | As percent of disposed |
| Number of defendants | | | | | | | | | | | | | | |
| California STATE TOTAL | 15,632 | 739,353 | 422,196 | 57 | 440,607 | 60 | 18,411 | 2 | 12,983 | 2 | | | 157,378 | 21 |
| Superior Court | – | 49,111 | 35,089 | 71 | 41,644 | 85 | 6,555 | 13 | 1,540 | 3 | | | 5,441 | 11 |
| Justice Court | – | 64,921 | 28,651 | 44 | 31,451 | 48 | 2,800 | 4 | 2,053 | 3 | | | 10,585 | 16 |
| Municipal Court | | 625,321 | 358,456 | 57 | 367,512 | 59 | 9,056 | 1 | 9,390 | 2 | | | 141,352 | 23 |

*State Court Caseload Statistics: Annual Report, 1977,* National Center for State Courts _____ (1982). Footnotes indicating that some data from the courts are still incomplete are omitted from this abridged table.

As these statistics vividly indicate, out of 440,607 convictions, 422,196, or 96%, were based upon pleas of guilty. Convictions after trial accounted for only 18,411 cases, or 4% of the total. This Court's decision in *Allen* v. *McCurry, supra,* prevents post-conviction civil rights litigation in only 4 out of 100 cases. But, what of the other 96%?

The statistics for Calfornia in 1981 show no dilution of this potential for a torrent of post-conviction civil rights litigation. Of 116,622 adult felony arrestees convicted in California courts in 1981, 111,783, or 95.8% resulted from guilty pleas, while only 4,839, or 4.1%, resulted from trial verdicts. This illustration makes the point quite vividly:

METHOD OF CONVICTION OF ADULT FELONY ARRESTEES CONVICTED IN 1981




Note: Percents may not add to 100.0 because of rounding.
Source: Table 46.

*Department of Justice, State of California, Crime and Delinquency in California, 1981,* 48, 49 (1982).

*Amici* submit that the decision of the Fourth Circuit Court of Appeals can only encourage this increase in federal civil rights litigation by state prisoners, while producing the anamolous result that insufficient attention may be paid to meritorious claims by judges reacting to the suffocating numbers of frivolous claims. Respondent may be pleased to find himself in the federal courts with his claim, but many prisoners who are less fortunate to gain the ear of a federal court judge with a meritorious claim will not applaud his effort. Additionally, it cannot be doubted that while the incidence of litigation against law enforcement officers will continue to skyrocket, fueled by decisions such as that of the Court of Appeals, legitimate and necessary law enforcement activities will be adversely affected by the flood of frivolous litigation.

We do not criticize the right of a citizen to sue law enforcement officers for legitimate injuries. However, although some meritorious claims are settled, surveys of state and federal police misconduct litigation conducted by **AELE** indicate that less than *four per cent* of all suits filed ever result in a plaintiff's verdict. The vast majority of cases are groundless and are dismissed by the courts for lack of a viable cause of action or are voluntarily dropped by plaintiffs. Of those that *actually go to trial,* plaintiffs recover in only 25.77% of the cases. Many of the unsuccessful cases are filed to harass conscientious police officers, to obtain revenge, or to provoke discussions leading to the dismissal or reduction of criminal charges pending against a plaintiff.

*Amici* concede that civil litigation provides an incentive for police administrators to continually evaluate departmental procedures and monitor practices of specific officers. The overwhelming volume of suits, however, whether based upon Fourth Amendment claims or other alleged violations of constitutional rights, is counterproductive to this end. Frivolous claims in large numbers numb or desensitize a responsible law enforcement executive. Truly legitimate complaints are overshadowed by thousands of frivolous claims.

The following Table, based upon an **AELE** survey of two five year periods, indicates the status of such suits:

| STATUS | PERCENT OF SUITS BY STATUS* 1967-71 | 1972-76 |
|---|---|---|
| Suits still pending | 32.1 | 41.2 |
| Suits settled | 14.4 | 22.5 |
| Dropped by plaintiffs or dismissed on a motion | 29.4 | 22.6 |
| Number tried in court which police WON | 19.6 | 10.1 |
| Number tried in court which police LOST | 4.5 | 3.5 |

These statistics dramatically illustrate the need for this Court to avoid further exacerbation of the litigation explosion involving law enforcement officers that has overtaken our state and federal courts. *Amici* respectfully submit that the application of collateral estoppel principles to § 1983 actions in guilty plea cases emanating from the state courts will assure that meritorious Fourth Amendment claims receive the prompt, effective attention from state and federal courts that they deserve, while at the same time protecting law enforcement officers from the harassment and vexation of groundless civil litigation.

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* The two five year surveys included a cross-section of 2,060 law enforcement agencies that, in 1977, employed 153,130 officers, or about 25% of the nation's total.

## CONCLUSION

*Amici* respectfully submit that the decision of the United States Court of Appeals, Fourth Circuit, should be reversed on the law and on the basis of sound judicial policy.

Respectfully submitted,

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